

## FERN LAKE CONSERVATION AND RECREATION ACT OF 2001

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DECEMBER 4, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HANSEN, from the Committee on Resources,  
submitted the following

### R E P O R T

[To accompany H.R. 2238]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2238) to authorize the Secretary of the Interior to acquire Fern Lake and the surrounding watershed in the States of Kentucky and Tennessee for addition to Cumberland Gap National Historical Park, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Fern Lake Conservation and Recreation Act of 2001”.

#### SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Fern Lake and its surrounding watershed in Bell County, Kentucky, and Claiborne County, Tennessee, is within the potential boundaries of Cumberland Gap National Historical Park as originally authorized by the Act of June 11, 1940 (54 Stat. 262; 16 U.S.C. 261 et seq.).

(2) The acquisition of Fern Lake and its surrounding watershed and its inclusion in Cumberland Gap National Historical Park would protect the vista from Pinnacle Overlook, which is one of the park’s most valuable scenic resources and most popular attractions, and enhance recreational opportunities at the park.

(3) Fern Lake is the water supply source for the city of Middlesboro, Kentucky, and environs.

(4) The 4500-acre Fern Lake watershed is privately owned, and the 150-acre lake and part of the watershed are currently for sale, but the Secretary of the Interior is precluded by the first section of the Act of June 11, 1940 (16 U.S.C. 261), from using appropriated funds to acquire the lands.

(b) PURPOSES.—The purposes of the Act are—

(1) to authorize the Secretary of the Interior to use appropriated funds if necessary, in addition to other acquisition methods, to acquire from willing sellers Fern Lake and its surrounding watershed, in order to protect scenic and natural resources and enhance recreational opportunities at Cumberland Gap National Historical Park; and

(2) to allow the continued supply of water from Fern Lake to the city of Middlesboro, Kentucky, and environs.

**SEC. 3. LAND ACQUISITION, FERN LAKE, CUMBERLAND GAP NATIONAL HISTORICAL PARK.**

(a) **DEFINITIONS.**—In this section:

(1) **FERN LAKE.**—The term “Fern Lake” means Fern Lake located in Bell County, Kentucky, and Claiborne County, Tennessee.

(2) **LAND.**—The term “land” means land, water, interests in land, and any improvements on the land.

(3) **PARK.**—The term “park” means Cumberland Gap National Historical Park, as authorized and established by the Act of June 11, 1940 (54 Stat. 262; 16 U.S.C. 261 et seq.).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior, acting through the Director of the National Park Service.

(b) **ACQUISITION AUTHORIZED.**—The Secretary may acquire for addition to the park lands consisting of approximately 4,500 acres and containing Fern Lake and its surrounding watershed, as generally depicted on the map entitled “Cumberland Gap National Historical Park, Fern Lake Watershed”, numbered 380/80,004, and dated May 2001. The map shall be on file in the appropriate offices of the National Park Service.

(c) **AUTHORIZED ACQUISITION METHODS.**—

(1) **IN GENERAL.**—Notwithstanding the Act of June 11, 1940 (16 U.S.C. 261 et seq.), the Secretary may acquire lands described in subsection (b) by donation, purchase with donated or appropriated funds, or exchange. However, the lands may be acquired only with the consent of the owner.

(2) **EASEMENTS.**—At the discretion of the Secretary, the Secretary may acquire land described in subsection (b) that is subject to an easement for water supply facilities and equipment associated with the withdrawal and delivery of water by a utility from Fern Lake to the city of Middlesboro, Kentucky, and environs.

(d) **BOUNDARY ADJUSTMENT AND ADMINISTRATION.**—Upon the acquisition of land under this section, the Secretary shall revise the boundaries of the park to include the land in the park. Subject to subsection (e), the Secretary shall administer the acquired lands as part of the park in accordance with the laws and regulations applicable to the park.

(e) **SPECIAL ISSUES RELATED TO FERN LAKE.**—

(1) **PROTECTION OF WATER SUPPLY.**—The Secretary shall manage public recreational use of Fern Lake, if acquired by the Secretary, in a manner that is consistent with the protection of the lake as a source of untreated water for the city of Middlesboro, Kentucky, and environs.

(2) **SALE OF WATER.**—

(A) **CONTRACT WITH UTILITY.**—Upon the Secretary’s acquisition of land that includes Fern Lake, the Secretary shall enter into a contract to sell untreated water from the lake to a utility that delivers and distributes water to the city of Middlesboro, Kentucky, and environs. The Secretary shall ensure that the terms and conditions of the contract are consistent with National Park Service policies for the protection of park resources, provided that the terms and conditions do not adversely affect the delivery and distribution of water to the city of Middlesboro, Kentucky, and environs.

(B) **PROCEEDS FROM WATER.**—The Secretary shall negotiate a reasonable return to the United States for the sale of the water, which the Secretary may receive in the form of reduced charges for water service. Proceeds from the sale of the water, reduced by any offsets for water service to the park, shall be available for expenditure by the Secretary at the park without further appropriation.

(f) **CONSULTATION REQUIREMENTS.**—In order to better manage Fern Lake and its surrounding watershed, if acquired by the Secretary, in a manner that will facilitate the provision of water for municipal needs as well as the establishment and promotion of new recreational opportunities made possible by the addition of Fern Lake to the park, the Secretary shall consult with—

(1) appropriate officials in the States of Kentucky, Tennessee, and Virginia, and political subdivisions of these States;

(2) organizations involved in promoting tourism in these States; and

(3) other interested parties.

#### PURPOSE OF THE BILL

The purpose of H.R. 2238 is to authorize the Secretary of the Interior to acquire Fern Lake and the surrounding watershed in the States of Kentucky and Tennessee for addition to Cumberland Gap National Historic Park, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

The Cumberland Gap National Historical Park is situated in and around Cumberland Mountain in Kentucky, Tennessee, and Virginia. It was established in 1940 to preserve the natural passage through the Appalachian Mountains and the region around it. First used by large migrating animals, then by Native Indians, it was the first and best avenue for settlement of the interior of the nation. From 1775–1823, during the Gap’s heyday, 300,000 people crossed the Cumberland Gap into Kentucky.

The enabling legislation authorized the Park area to encompass up to 50,000 acres. To date, Cumberland Gap National Historical Park consists of 20,500 acres. The 4,500 acres associated with the acquisition would be within the size authorized by the original legislation.

Fern Lake and the surrounding watershed is important to the residents of Middlesboro, Kentucky, as it is their primary source for drinking water. The area also continues to be threatened with immediate development. Acquisition of the property by the National Park Service would ensure that the land is not developed, the watershed and scenic views are preserved, and recreational opportunities are enhanced at Cumberland Gap National Historic Park. The primary land owner values the land at approximately \$5 million and is a willing seller. According to the bill’s author, Congressman Harold Rogers (R–KY), the announcement of the sale of these lands for inclusion in the Park has generated strong support from citizens in the tri-state area.

#### COMMITTEE ACTION

H.R. 2388 was introduced on June 19, 2001, by Congressman Harold Rogers (R–KY) and was referred to the Committee on Resources. On November 13, 2001, the Subcommittee held a hearing on the bill. On November 15, 2001, the Subcommittee met to mark up the bill. No amendments were offered and the bill was ordered favorably reported to the Full Committee by unanimous consent. On November 28, 2001, the Full Resources Committee met to consider the bill. Congressman George Radanovich (R–CA) offered an amendment in the nature of a substitute that made the following changes to the original text: (1) required the National Park Service to only ensure the continued supply of water from Fern Lake to the City of Middlesboro, Kentucky, and not the purity of the water prior to its treatment; (2) corrected a map reference; (3) directed the Secretary to contract with a utility to deliver and distribute water to the City of Middlesboro, Kentucky, and to ensure that the contract will be consistent with National Park Service policies, provided that the terms do not adversely affect the delivery and distribution of the water to Middlesboro, Kentucky; and (4) directed the Secretary to negotiate a reasonable return to the government

for the sale of the water. The amendment was adopted by unanimous vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

#### COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The Committee believes that enactment of this bill will have little impact on the budget of the United States. The value of the property authorized to be acquired is estimated at \$5 million. It is unclear if the property will be acquired by purchase (with appropriated or donated funds), donation or exchange. In addition, the United States may also receive offsetting revenue from the sale of water under this bill, although the amount to be received is unclear at this time. Finally, there may be additional minor costs associated with management of the increased acreage at Cumberland Gap National Historical Park by the National Park Service if the land is acquired.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in tax expenditures. The United States may receive funds from the sale of water under this bill, but this amount is undetermined at this time. Any funds received may be spent without further appropriation for the benefit of the Cumberland Gap National Historical Park.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill will not change existing law.

